the contract need not be one which equity would enforce at the suit of either party.

It is usually said that such mutuality is essential. See *Flight* v. *Bolland*, 4 Russ. 298; *Norris* v. *Fox*, 45 Fed. Rep. 406; FRY, SPEC. PERF., 3d ed., 215. The courts have, however, always applied the rule cautiously, and many jurisdictions have disregarded it in several classes of cases. Among these are cases in which only the defendant has signed a memorandum sufficient under the Statute of Frauds, and those in which the plaintiff is a married woman who might, were she the defendant, defeat a bill for specific performance by avoiding her contract. *Hatton* v. *Gray*, 2 Ch. Cas. 164; *Fennelly* v. *Anderson*, 1 Ir. Ch. Rep. 706. But in spite of such exceptions the rule in its broadest form is still frequently applied both in contracts involving personal service and elsewhere. *Welty* v. *Jacobs et al.*, 171 Ill. 624; *Solt* v. *Anderson*, 89 N. W. Rep. 306 (Neb.). The statement, therefore, that mutuality of remedy is unnecessary "according to the established law" seems questionable.

While the author's statement of the law is perhaps inadequate, his general treatment is suggestive. The doctrine as broadly stated is technical, and if indiscriminately applied would sacrifice the justice of particular cases to the maintenance of a rigid rule. It is true that in many instances where a decree of specific performance would work hardship on the defendant, the principle of mutuality is properly invoked to prevent an inequitable result; for example, when the defendant has contracted to do an immediate act in return for the plaintiff's promise to render personal service in the future, — a promise which, of course, a court of equity would not specifically enforce. Here equity properly declines to grant its extraordinary relief against a defendant who has, in his turn, no similar assurance that the plaintiff will fulfill his promise. *Alworth* v. *Seymour*, 42 Minn. 526. But from such instances the doctrine of mutuality would seem no longer to exist as a distinct and independent principle, but to be merely an expression or application of the fundamental rule that a court of equity will never allow itself to be made an instrument of injustice. On this view, apparently, specific performance should be refused for lack of mutuality of remedy only where, on the facts of a particular case, such mutuality is necessary to carry out the objects of the contract with fairness to both parties. So if the decree would in effect compel performance by both parties, it should not be held an objection that performance by the plaintiff was not at first specifically enforcible, as in the case of coverture cited above. This principle apparently underlies the decisions in a number of jurisdictions. *Fennelly* v. *Anderson*, *supra*; *Borel* v. *Mead*, 3 N. Mex. 39. It also seems to be endorsed in a recent Pennsylvania case, which is adopted as the text of the article referred to above. *Philadelphia Ball Club* v. *Lajoie*, 51 Atl. Rep. 973 (Pa.). While, therefore, it cannot be said to be settled law that mutuality of remedy is required only when the just solution of the case in question demands it, there appears to be a tendency toward the adoption of that view.

It may be added that the question of mutuality discussed in the case last cited is not the ordinary one as to mutuality of remedy. The contract there contained a provision that the plaintiff might at any time end it on ten days' notice. It was urged that this provision deprived the contract of mutuality. A similar objection has been held fatal in other jurisdictions. *Rust* v. *Conrad*, 47 Mich. 449. But the decision in the Pennsylvania case seems the sounder, as it fulfills the terms of the contract without hardship on either party. It is also supported by several other decisions. *Franklin, etc., Co.* v. *Harrison*, 145 U. S. 459; *Singer S. M. Co.* v. *Union, etc., Co.*, Holm. (U. S. Circ. Ct.) 253.

THE COAL MINES AND THE PUBLIC. A Popular Statement of the Legal Aspects of the Coal Problem, and of the Rights of the Consumers as the Situation exists September 17, 1902. By Heman W. Chaplin. Boston & New York: J. B. Millet Company. 1902. pp. 63.

In the midst of arms the laws are silenced; that is the danger in time of industrial storm as it is in time of military stress. The fear at the time this

pamphlet is laid before the public is that the urgent necessity for fuel will lead to overriding all legal rights in the premises, rather than that all the established remedies of the law will not be employed. That is, the peril in the situation as it is at this writing is not that the trade dispute will not be brought to a settlement by inner forces, but that some great change will be worked in the law in the present exasperation. At such a time, more than at any other, he who asserts the necessity of an extension in the law must prove its propriety in such a way as to commend it to calm judgment. The position taken in this pamphlet, that the coal operators of Pennsylvania are engaged in a public calling and therefore are subject to governmental control, involves an examination into the division between public callings and private callings. For if these coal operators be in public calling they must serve all who apply with adequate facilities for reasonable compensation and without discrimination; whilst if they be in a private calling they may refuse coal to any one, produce as little as they please, charge any price, make any terms. It is the premise that requires legal discussion, for the conclusions will be accepted without citation. Mr. Chaplin is very sound in his exposition of these rules and very apt in his illustration of them. Upon one point, in particular, of first importance in the present crisis, his discussion leaves nothing to be desired. The problem put is: if these coal operators are in public calling, will the fact that their employees quit work excuse them? As Mr. Chaplin points out, the strike in itself is no excuse; a railroad, for example, must provide men to run its locomotives as much as it must provide other facilities; on the other hand, the existence of mob violence is a defence (advance sheets of new edition). The examination of these details is important work; for upon the successful working out of these rules depends to a large extent the maintenance of the present order of things based upon private ownership and public regulation.

It is to his premise, not to his conclusions, that one must address himself if he is to dispute Mr. Chaplin. On September 17, 1902, was supplying coal public business or private business? That is the issue he propounds, — a problem more of economics and fact than of law and reason. To determine this, Mr. Chaplin uses as the basis of his discussion, as every such inquiry must, a passage in *Munn* v. *Illinois*, 94 U. S. 113: "Property does become clothed with a public interest when used in a manner to make it of public consequence and to affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has created." General phrases these, so general as to require for their understanding the examination of many examples. Carriers by land and sea, innkeepers and warehousemen, telegraph and telephone companies, purveyors of light and water, — all these are by the decisions held to be in public calling; and yet the department store and the cotton press, the grocer and the undertaker, the newspaper and the circus, — these by the reports are in private calling. Mr. Chaplin surely argues without these diverse cases in mind when he says (p. 24) that "whoever so conducts his property or his business as to enter into relations with the public and leads them to depend upon his services and the use of his property, thenceforth holds his property and his services no longer as private property, but subject to a superior and dominating interest in the public." Clearly not every one who professes to serve the public is in public calling, nor does every public need make those in public calling who supply it; the inquiry must go deeper.

Mr. Chaplin brings forward a test more worth discussion on p. 26, — virtual monopoly. Undoubtedly much may turn upon that; because here we touch the economic foundation of the division between public and private calling, — in one class those businesses left to the regulation of competition, in the other class those industries which have the situation in their own control, because freed from competition. How now do the facts stand in the business of supply of fuel, if you grant, without more proof, a present virtual monopolization, — a fact by no means established? The discussion most in point known to the

writer of this review, is in the opinions of the justices, 155 Mass. 598. There the question was as to the constitutionality of the proposition for the operation of municipal coal yards; upon that question five of the justices said that this was a well-known form of private business, — not differing essentially from the trades of buying and selling other necessaries of life; the two dissenting judges dwelt upon the power of the law to meet all public needs. Mr. Chaplin pleads throughout that because of the present exigency the common law principle extends far enough to make out public calling in the present case. What he fails to consider is what consequences would follow, because of the force of a decision at common law in fixing a class for all future cases. Suppose a decision upon a writ of mandamus is handed down this month that coal mining, as it is conducted by the combination in Pennsylvania, is public calling because of the virtual monopoly; suppose, then, that next month the pool is broken and the seventy-five companies enter into competition, — does the business now revert to private calling? If you have one grocery in a town, that does not make it public calling, to revert to private calling when a new store is opened. Such a shifting of the position of things back and forth is hardly possible as a legal state of things. The law moves only in reference to conditions established by long experience, fixed upon stable foundations. Unless we restrict the unusual class of public callings to that situation where there is a permanent control of the service in the nature of things, we lay all industries open to public operation; that means the changing of our theory of the state from individualism to socialism. B. W.

THE LAW OF VOID JUDICIAL SALES. The Legal and Equitable Rights of Purchasers at Void Judicial, Execution, and Probate Sales, and the Constitutionality of Special Legislation validating Void Sales and authorizing Involuntary Sales, in the Absence of Judicial Proceedings. Fourth edition. By A. C. Freeman. St. Louis: Central Law Journal Company. 1902. pp. 341. 8vo.

What is said of the third edition of this book in 4 HARV. L. REV. 97, is equally true of the fourth edition. The author deserves praise for his clear and logical treatment of a troublesome topic. Some simple theories are propounded which should help to solve the legal difficulties frequently arising in cases of execution and judicial sales. As a text-book on a branch of the law that is of interest primarily to the practitioner, the volume will surely prove to be a work of great usefulness, — in fact, a standard manual on its subject.

While the plan and scope of this edition are essentially the same as those of the third edition, material additions are made to the subject-matter and the number of citations is nearly doubled. The alteration in the title can, however, hardly be regarded as a change for the better. The former title, beginning "Void Execution, Judicial, and Probate Sales," is more comprehensive and at the same time more exactly descriptive of the contents of the work than the present heading. A. L.

VISUAL ECONOMICS, with Rules for the Estimation of the Earning Ability after Injuries to the Eyes. By H. Magnus and H. V. Würdemann. Milwaukee: C. Porth. 1902. pp. 144. 5 plates. 8vo.

This book, which is designed to present to American readers the work of Professor Magnus, is an adaptation, rather than a translation, of the latter's German treatise. It enters upon a field hitherto almost wholly unexplored by English and American writers, namely, the scientific calculation of the economic values of bodily functions and the deduction of mathematical formulas designed to furnish a basis for determining the extent to which those values are impaired by injuries to the functions. The writers begin with a careful analysis of the elements entering into the complete earning capacity of individuals possessed of normal eyesight; they then evolve a formula by which to estimate the effect produced upon this "visual earning ability" by any